

Working Group on Transparency in Government Procurement

Status

Drawing largely on proposals made by the United States, Ministers agreed at the 1996 Singapore Ministerial Conference to establish a Working Group on Transparency in Government Procurement. The Working Group's mandate called for: (1) conducting a study on transparency in government procurement; and (2) developing elements for an appropriate WTO agreement on transparency in government procurement.

Assessment of the First Three Years of Operation

Since its first meeting 1997, the Working Group has made an important contribution to the United States' longstanding efforts to bring all WTO Members' procurement markets within the scope of the international rules-based trading system. During its first two years, the Working Group identified and analyzed a set of core principles of transparency and due process in procurement which are generally accepted and applied throughout the WTO membership. These principles tracked very closely with the non-binding principles on transparency in government procurement that the United States and its Pacific Rim trading partners developed simultaneously within the Asia Pacific Economic Cooperation (APEC) forum. The strong similarities between these two sets of principles confirmed that there is broad international agreement on essential principles of transparency in procurement and widespread recognition of the benefits that all governments derive from implementing those principles.

In 1999, the Working Group moved forward rapidly with the development of concrete provisions for potential international commitments in this area. On this basis, WTO Members are now poised to conclude a multilateral agreement on transparency in government procurement. This work provides a strong foundation for continuing to pursue U.S. procurement objectives in bilateral and regional negotiations, as well as in the WTO.

An eventual WTO agreement in this area would be an important contribution towards development of predictable and competitive procurement environments throughout the world. Although government procurement is of great commercial significance – the global procurement market is estimated to be worth over \$3.1 trillion annually – only 26 WTO Members presently belong to the plurilateral WTO Government Procurement Agreement due to its more stringent requirements. Transparency provisions would address a substantial number of concerns and build support for broader cooperation on procurement over the long term.

The United States also views this initiative as an important part of broader international efforts to promote the rule of law and combat international bribery and corruption. WTO commitments to ensure a transparent procurement environment could significantly reduce opportunities for the solicitation of bribes, and could therefore complement other international efforts – such as the OECD Convention on Combating Bribery – to criminalize the offering of bribes. Work in this area would also build on the good governance practices that many WTO Members have adopted as part of their overall structural reform programs. This would help to prevent the mis-allocation of resources, which inhibits the ability to address other social needs, and would promote fiscal and financial stability in countries affected by the Asian financial crisis.

Major Issues in 1999

In order to facilitate continued progress on the development of concrete elements for a potential WTO agreement on transparency in government procurement, the United States, Hungary and Korea jointly

submitted a draft text for an agreement in July 1999. Australia, the European Union and Japan subsequently submitted separate draft texts. Those submissions contained many similar provisions, including in relation to:

- < Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;
- < Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;
- < Clear specification in tender documents of evaluation criteria for award of contracts;
- < Availability to suppliers of information on contracts that have been awarded; and
- < Availability of mechanisms to challenge contract awards and other procurement decisions.

Between September-November 1999, the United States organized a series of intensive negotiations aimed at narrowing differences on concrete commitments in these and other key issues. Those negotiations resulted in converging views on most procedural elements of transparency in government procurement. At the end of the year, however, significant differences remained on several key elements, in particular:

- < the appropriate scope and coverage of a Transparency Agreement; and
- < the appropriate application of WTO dispute settlement procedures to such an Agreement.

Work for 2000

In 2000, the United States will continue to work with other WTO Members, in bilateral and regional fora as well as in the WTO, to resolve the remaining issues and build a consensus for conclusion of an Agreement in this area.